

REMARKS/ARGUMENTS

The Office action dated March 9, 2010 has been received and carefully considered. By this amendment, claims were not amended, and no new claims have been added. After entry of this Amendment, claims 1-2, 4-7, and 9-20 will be pending. In view of these amendments and the following remarks, Applicant respectfully requests reconsideration.

Restriction/Election

The Office considered the claims of the present application to be directed to 2 patentably distinct inventions. Specifically, the Examiner required election of a single invention, wherein the first invention is drawn to a regasification system having a heat source and other elements (Group I, claims 1-2, 4-7, and 9-16), while the second invention is drawn to a regasification system having a combined cycle power plant and other elements (Group II, claims 17-20). The office further required election of a species, where the first species is according to Figure 1 while the second species is according to Figure 2.

The applicant respectfully disagrees and *elects with traverse Group I*, reading on *claims 1-2, 4-7, and 9-16* and elects the *first species* according to *Figure 1*. Claims 17-20 were withdrawn without prejudice.

Further Remarks

It is pointed out to the examiner that while 37 CFR 1.142(a) states that a restriction "... requirement will normally be made before any action on the merits; however, it may be made at any time before final action...", MPEP 803, second paragraph, provides specific guidance for situations where restriction requirement is made late:

"... If the search and examination of ****>all the claims in an<** application can be made without serious burden, **the examiner must examine *>them< on the merits, even though **>they include< claims to independent or distinct inventions...**"
(emphasis added)

The present claims were not deemed directed towards multiple and distinct inventions in the International phase and did receive a complete search and examination (notably, all claims were deemed allowable at that time). Moreover, the present claims also received two office

actions on the merit, thus clearly providing evidence that search and examination of all the claims in the application could be made without serious burden. In this context, it should be noted that the amendments throughout the proceedings have not significantly shifted the claimed subject matter in a manner such as to present distinct inventions.

The applicant points to the decision on the petition in application number 09/478,351 where the applicant alleged that the election requirement was improper because there would be no burden on the examiner since all of the presented claims had already been rejected at least two times prior to the restriction requirement.

Most notably, *the decision held that there is no serious burden justifying restriction when all pending claims in an application have previously been rejected at least twice*. This decision is *de facto* precedent indicating that prior examination of all claims at least two times immunizes the application from a requirement for restriction. While there is nothing in the decision indicating that it is considered by the USPTO to be precedential, it is an agency interpretation of the agency's own procedural rules. Thus, any subsequent petition decision to the contrary in any other case would raise issues of arbitrary and capricious agency action in violation of the administrative procedures act ("APA").

Request For Allowance

Claims 1-20 are pending in this application. The applicant requests allowance of all pending claims.

Respectfully submitted,
Fish & Associates, PC

Date: April 7, 2010

By: /Martin Fessenmaier/
Martin Fessenmaier, Ph.D.
Reg. No. 46697

Fish & Associates, PC
2603 Main Street, Suite 1000
Irvine, CA 92614-4271
Telephone (949) 943-8300
mfessenmaier@fishiplaw.com